IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21821 of 2005
With
SPECIAL CIVIL APPLICATION No. 21825 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AGRICULTURAL PRODUCE MARKET COMMITTEE, DAHOD & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, for Respondent(s) : 1 - 2.
MR VC VAGHELA for Respondent(s) : 3
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/02/2006

ORAL JUDGMENT

1.Rule. Learned AGP Shri Gori appears and waives service of rule on behalf of respondent Nos.1 & 2 and learned

advocate Shri V.C.Vaghela waives service of notice of rule on behalf of respondent No.3 in each of the petitions.

2. At the joint request of the learned advocates appearing for the parties, these petitions are taken up for final disposal today.

3. In these petitions, the petitioners have challenged a common order dated 6.2.2004 passed by respondent No.2. Respondent No.3 in each of the petitions are holding licences issued by petitioner No.1 Agricultural Produce Market Committee. For certain disputes between respondent No.3 and traders, the petitioners were prompted to reject the request of respondent No.3 in both the petitions for renewal of the licences. Respondent No.3 therefore appealed against the decision of the petitioners. The Director of Market Committee, by his impugned order dated 6.2.2004 while setting aside the order passed by petitioner No.1 provided that till the final disposal of Civil Suit No.66/03 and subject to the outcome thereof, application of respondent No.3 will have to be considered. Though there is some dispute about the exact implication of the directives issued by respondent No.2, what is not seriously in dispute is that the Director was

influenced by the fact that the civil suit has been filed with respect to these issues and the said civil suit is pending. Admittedly, however, no interim injunction has been granted in such civil suit. Simply because some litigation has been initiated, that would not be a good enough reason to provide that the licences of respondent No.3 in both the petitions cannot be cancelled till the outcome of civil litigation especially when no interim injunction has been granted by the civil court. Respondent No.2 ought to have decided the appeal of respondent No.3 in both the petitions on its merits and taken a decision whether the Market Committee was justified in refusing to renew the licences of the said respondents on the basis of available material on record.

4. In view of the above conclusion, I would have been inclined to remand the proceedings with respect to both the licence-holders to the Director for fresh consideration. However, respondent No.3 in Special Civil Application No.21825 of 2005 does not appear to be directly connected with the allegations of misdeeds of respondent No.3 in Special Civil Application No.21821 of 2005. It is, however, true that respondent No.3 of SCA No.21821 of 2005 is the husband of

respondent No.3 of SCA No.21825 of 2005. However, since there are no specific allegations against the wife, it would not be necessary to remand the proceedings with respect to renewal of her licence. Learned advocate Shri Patel for the petitioners however submitted that husband of respondent No.3 in Special Civil Application No.28125 of 2005 is acting as her agent and authorized person as per the bye-laws of the Market Committee. Learned advocate Shri Vaghela assured this Court that till the issues against her husband are cleared, the said respondent will not transact any business on the basis of her licence through her husband and she will nominate some other person who will act as an agent or authorized persons for and on her behalf. Her request for renewal of licence shall have to be considered on its own merits periodically as when made to the Market Committee. Therefore, Special Civil Application No.21825 of 2005 is required to be and is hereby rejected.

5. With respect to Special Civil Application No.21821 of 2005, the proceedings are required to be remanded to respondent No.2 for fresh consideration in accordance with law bearing in mind the observations made hereinabove. For the above purpose, the impugned order

dated 6.2.2004 in so far as the same pertains to the question of renewing the license of respondent No.3 in Special Civil Application No.21821 of 2005 is concerned, the same is set aside. The proceedings are remanded to respondent No.2 for fresh consideration and disposal expeditiously. In view of the setting aside of the order passed by the Director, the consequential order of the State Government also will not stand.

6. Rule is discharged in Special Civil Application No.21825 of 2005 with no order as to costs. Rule is made absolute to the above extent in Special Civil Application No.21821 of 2005 with no order as to costs.

(Akil Kureshi, J.)

(vjn)